RE: NGAN CHING WEN EXPARTE: MOSCOW NARODNY BANK LTD.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' JAMES FOONG J
[IN BANKRUPTCY NO. D4-29-3629-92]
20 DECEMBER 1995

BANKRUPTCY: *Creditor's petition - Appeal against dismissal by senior Assistant Registrar - Whether judgment debtor should be allowed to oppose petition when no action taken under s. 3(1)(i) of the Bankruptcy Act 1967 - Non-disclosure of counterclaim, set-off or cross demand - Bankruptcy Rules 1969 r. 95.*

BANKRUPTCY: *Notice by debtor of intention to oppose petition - Bankruptcy Rules 1969 r. 117 - Whether permitted in the light of defence of accord and satisfaction by debtor - Bankruptcy Act 1967 ss. 5(1), 6(2)(3).*

BANKRUPTCY: *Whether statute barred interest incorporated in creditor's petition rendered notice and petition void ab initio - Limitation Act 1953 s. 6(3).*

BANKRUPTCY: *"Without prejudice" letter used by petitioning creditors in affidavit to support petition - Whether permissable.*

The judgment creditor in this case appealed against the dismissal of its bankruptcy petition by the Senior Assistant Registrar of the High Court. At the hearing of the appeal the judgment creditor's main contention was that the judgment debtor should be prohibited from raising any of the issues stated by him in his affidavit, filed together with a notice of intention to oppose the petition, since he did not, within 7 days after service of the bankruptcy notice, make an application or file an affidavit to set aside the said bankruptcy notice as per s. 3(1)(i) of the Bankruptcy Act 1967. The judgment debtor on the other hand canvassed that by filing the notice of intention to oppose the petition, he has a right to be heard notwithstanding that he had failed to comply with s. 3(1)(i) of the Act. To substantiate the point, the judgment debtor further argued that he had stated in his affidavit his defence of accord of satisfaction of the judgment sum by his payment of US$200,000 to the petitioning creditor as full and final settlement. Over and above these, he also contended that the judgment debt included interest which is statute barred and as such the whole bankruptcy notice and petition became void *ab initio* and unenforceable.

The central issue before the Court was whether by filing the notice to oppose the petition pursuant to r. 117 of the Bankruptcy Rules, the judgment debtor has the right to be heard at the hearing of the petition, even though he has not complied earlier with s. 3(1)(i) of the Act. Two other ancillary issues which

also came for determination were (i) whether the "without prejudice" letter from the judgment debtor could be used by the petitioning creditor in its affidavit and (ii) whether the interest on the judgment debt which is statute barred has caused the bankruptcy notice to become void *ab initio.*

Held:

[1] By filing the notice to oppose the petition pursuant to r. 117 of the Bankruptcy Rules 1967, the judgment debtor certainly has the right to be heard, even though he has not complied earlier with s. 3(1)(i) of the Bnkruptcy Act (Act). However, what he can be heard on is entirely a separate matter.

[2] The judgment debtor's opposition at the hearing of the petition must, without fail, be confined strictly to the conditions and principles as enumerated under ss. 5(1) and 6(2) of the Act and not otherwise.

[3] The judgment debtor's first contention of accord and satisfaction of the judgment sum by his payment of US$200,000 to the petitioning creditor as full and final settlement, falls under ss. 5(1) and 6(2)(3) of the Act. It is therefore incumbent on the petitioning creditor to prove that a debt is payable by the judgment debtor either immediately or at some future time. His defence of accord and satisfaction deals with the issue of whether there is a debt payable to the petitioning creditor. It is neither a set off, counterclaim or a cross demand which he could not have set up in the action in which the judgment was obtained. His claim relates to no money actually due to the petitioning creditor because payment has been made before the petition was filed. For this the debtor is certainly entitled to be heard.

[4] Based on the documentary evidence annexed to the affidavits there was no agreement ever reached between the judgment debtor and petitioning creditor to treat the payment of US$200,000 as a full and final settlement of the judgment debt.

[5] The judgment debtor has himself made reference and commented on his "privilege" letter in his own affidavit. By so doing he has on his own volition waived his privileges to the admissibility of the said letter.

[6] The amount of interest that is statute barred under s. 6(3) of the Limitation Act 1953 had been absorbed into the whole sum claimed and had become indistinguishable. And since the interest item has formed an integral part of the total amount inseparable from the principal and other sums, the entire claim of the petitioning creditor as enumerated in the bankruptcy notice and petition is, therefore, unenforceable.

[Appeal and petition dismissed]

Cases referred to:
Datuk Lim Kheng Kim v. Malayan Banking Bhd. [1993] 2 MLJ 298 ***(refd)***
Low Mun v. Chung Khiaw Bank Ltd. [1988] 1 MLJ 142 ***(refd)***
Malayan Banking Bhd. v. Foo See Mo1 [1981] 2 MLJ 17 ***(foll)***
Allumini Industries Sdn. Bhd. v. Cookermate (M) Sdn Bhd [1990] 2 CLJ 777 ***(foll)***
Oh Kuang Liang v. Associated Wood Ind. Sdn. Bhd. [1995] 2 CLJ 961; [1995] 2 AMR 1872 ***(foll)***
Lim Tjoen Kong v. A-B Chew Investment Pte Ltd. [1991] 2 MLJ 4 ***(foll)***
Re Woodall, ex-parte Woodall [1884] 13 QBD 479 ***(foll)***
Re A debtor [1938] 1 All ER 824 ***(foll)***
Wee Chow Yong T/A Vienna Music Centre v. Public Finance Bhd. [1989] 3 MLJ 509 ***(dist)***
Ex-parte Tyrte, In Re Tynte [1880] 15 Ch D 125 ***(foll)***

Legislation referred to:
Bankruptcy Act 1967, ss. s. 3(1)(i), 5(1), 5(1)(b), 6(2)
Bankruptcy Rules, rr. 95, 117
Limitation Act 1953, s. 6(3)

Other sources referred to:
Halsbury's Laws of England, 4th Edn., para. 273, Vol. 3

For the petitioner - Peter Pereira, M/s. Skrine & Co.
For the respondent - Lee Chan Leong, M/s. Low Hop Bing, Koh Kong & Assoc.

JUDGMENT

James Foong J:

This appeal relates to a bankruptcy petition (the petition) brought by the creditors, Moscow Narodny Bank Ltd. (hereinafter referred to as the petitioning creditors) for a receiving order against one Ngan Ching Wen (hereinafter referred to as the debtor).

In the petition, the petitioning creditors are alleging the debtor is justly and truly indebted to them for a sum of RM5,513,468.61. The particulars of indebtedness show an outstanding principal sum of RM4,403,295 derived from a judgment order from the High Court at Kuala Lumpur dated 19 November 1987. As regards to interest due on the principal sum, it is calculated from 22 March 1986. There were payments made by the debtor from time to time towards the judgment debt and these were also duly noted in the particulars. Besides, the petitioning creditors also alleged that the debtor had within 6 months before the date of presentation of the petition committed an act of bankruptcy by failing to comply with the bankruptcy notice (the bankruptcy notice) dated 4 June 1992, which was duly served on him.

The debtor filed a notice of intention to oppose the petition dated 23 May 1994. This was followed by an affidavit of the debtor alleging that he has satisfied the judgment debt by the payment of a sum of US$200,00 to the

petitioning creditors on 11 November 1993 as full and final settlement of the judgment debt. Such an allegation is refuted by the petitioning creditors who insisted that the debtor's offer towards such a full settlement was never accepted by them, and their acceptance of the payment of US$200,000 from the debtor was towards part payment of the judgment sum.

The petition was heard on 23 June 1995 by the Senior Assistant Registrar (SAR) of the High Court where it was dismissed with cost. An appeal was then lodged to the Judge of the High Court. As there is no grounds of judgment written by the SAR, this Court proceeded with this appeal as a retrial.

At the hearing of this appeal the petitioning creditors submitted *inter-alia*:

(a) that the debtor should be barred from raising any of the issues stated in his affidavits, since he has not within 7 days after service of the bankruptcy notice made an application or file an affidavit to set aside the said bankruptcy notice, as is required under s. 3(1)(i) of the Bankruptcy Act 1967 (hereinafter shall be referred to as the said Act);

(b) that the tendering of the payment of US$200,000 by the debtor to the petitioning creditors is not for full and final settlement of the judgment debt as is revealed from the exhibits attached to the affidavit of both parties.

The debtor in his submission persisted on the judgment debt being fully settled by accord and satisfaction, and replied *inter-alia*:

(a) that by filing the notice of intention to oppose the petition, he has a right to be heard though he failed to comply with s. 3(1)(i) of the Act; and

(b) that the petitioning creditors' claim included interest on the judgment debt which is statute barred thereby causing the bankruptcy notice to be void *ab initio*;

(c) that the decision of the learned SAR should be maintained and not be disturbed by an appellate Court.

On the petitioning creditors' first contention that the debtor is barred from raising his objection at this stage of the proceedings due to his failure to comply with s. 3(1)(i) of the Act, it is necessary for this Court to examine the relevant provisions of the Bankruptcy Act in line with the existing authorities relating thereto.

Section 3(1)(i) of the Act provides that:

> A debtor commits an act of bankruptcy; "If a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in the Federation, or by leave of the Court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the

judgment or order with interest quantified up to the date of issue of the bankruptcy notice, or to secure or compound for it to the satisfaction of the creditor or the Court; **and he does not within seven days after service of the notice** in case the service is affected in Malaysia, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice *or satisfy the Court that he has a counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could set up in the action in which the judgment was obtained* or in the proceedings in which the order was obtained;" (the italics are that of this Court).

From the words of this section, the act of bankruptcy would have been committed by the debtor if he fails to, within seven days after service of bankruptcy notice satisfy the Court that he has a counter-claim, set off or a cross demand equals or exceeds the judgment debt claimed by the petitioning creditors. Therefore, if the debtor wish to challenge this bankruptcy notice, he must within seven days file an affidavit as provided for under r. 95 of the Bankruptcy Rules, which states as follows:

The filing of an affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the Registrar shall fix a day for hearing the application, and shall give not less than three clear days notice thereof to the debtor, the creditor and their respective solicitors, if known.

At the hearing of this application, as noted in para. 273, Vol. 3 *Halsbury's Laws of England*, 4th Edn.;

the Court will not go behind the judgment on which the notice is founded, but is confined to the consideration of the alleged counter-claim, set off or cross demand in the terms of the statutory provisions relating to it.

This is exactly the position adopted by the Supreme Court in *Datuk Lim Kheng Kim v. Malayan Banking Bhd*. [1993] 2 MLJ 298, where Justice Dzaiddin SCJ states:

We are concerned here with the content of the said affidavit. It merely denies and disputes the applicant was indebted to the respondent in the sum of RM2,603,913.28, but fails to disclose that he has a counter-claim set off or cross demand, etc against the respondent, which he is required to dispose under s. 3(1)(i) of the Bankruptcy Act ("the Act") and provided for in Form 7.

In our case, the debtor did not file an affidavit within the stipulated time under s. 3(1)(i) of the Act, and consequently an act of bankruptcy was committed by him. However, is he barred from contesting the bankruptcy petition with his claim?

In order to answer this question, this Court shall examine the next stage of the bankruptcy procedure. Subsequent to the act of bankruptcy, a bankruptcy petition can be presented, but under s. 5(1)(b) of the Act, the act of bankruptcy

must have been occurred within 6 months before the presentation of the petition. This therefore becomes a condition to be fulfilled before filing a bankruptcy petition even though the act of bankruptcy has been committed.

Rule 117 of the Bankruptcy Rules then provides that:

> Where a debtor intends to show cause against a petition he shall file a notice with the Registrar specifying the statements in the petition which he intends to deny or dispute and transmit by post or otherwise to the petitioning creditor and his solicitor if known a copy of the notice three days before the day on which the petition is to be heard.

The format of the notice stated above can be found in Form 16 of the Bankruptcy Rules, and it bears the title 'notice by debtor of intention to oppose Petition' (for the purpose of this case this notice shall be referred to as the notice to oppose).

In this case before this Court, the debtor did file this notice to oppose coupled with an affidavit where he sets out his contention of accord and satisfaction of the judgment sum by his payment of US$200,000 to the petitioning creditors as full and final settlement. By filing this notice to oppose, the debtor certainly has the right to be heard at the hearing of the petition, even though he has not complied earlier with s. 3(1)(i), of the Act. However, what he can be heard on is another matter altogether.

Now this Court shall examine what are the subject matter he can be heard. For this, one must turn to ss. 5(1) and 6(2) of the Act. s. 5(1) provides as follows:

> 5(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless:
>
> (a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors, amounts to ten thousand ringgit; and
>
> (b) the debt is a liquidated sum payable either immediately or at some certain future time; and
>
> (c) the act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition; and
>
> (d) the debtor is domiciled in Malaysia or in any State or within one year before the date of the presentation of the petition has ordinarily resided or had a dwelling house or place of business in Malaysia or has carried on business in Malaysia personally or by means of an agent or is or has been within the same period of member of a firm or partnership which has carried on business in Malaysia by means of a partner or partners or an agent or manager.

The above section must then be read in conjunction with s. 6, particularly sub-section 2 and 3 which requires;

Section 6(2) - At the hearing the Court shall require proof of:

(a) the debt of the petitioning creditor; and

(b) the act of bankruptcy or, if more than one act of bankruptcy is alleged in the petition, someone of the alleged acts of bankruptcy; and

(c) if the debtor does not appear, the service of the petition, and if satisfied with the proof may make a receiving order in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt or of the act of bankruptcy or of the service of the petition or is satisfied that the debtor is able to pay his debts or that for other sufficient cause no order ought to be made, the Court may dismiss the petition."

Obviously from the above and reading the restriction imposed by s. 3(1)(i) of the Act relating to the setting aside of the bankruptcy notice, and applying the strict interpretation of the provision of the Act (see the case of *Low Mun v. Chung Khiaw Bank Ltd.* [1988] 1 MLJ 142), the debtor cannot at this stage, either go behind the judgment on which the bankruptcy notice is founded, or set forth counter-claim, set off or cross claim which he could not set-up in the action in which the judgment was obtained. To allow him to do so would tantamount to not only allowing him another bite at the cherry, but also permitting another avenue for him to voice his opposition to the judgment which was not even opened to him at the setting aside of the bankruptcy notice stage. The debtor's opposition at the hearing of the petition must surely be confined strictly to the conditions and principles as laid down under s. 5(1) and 6(2) of the Act and not otherwise. This must be the position which the Supreme Court in *Datuk Lim Kheng Kim v. Malayan Banking Bhd.* [1993] 2 MLJ 301 attempted to solve when the debtor in that case filed affidavits at different stages to the proceedings disputing the judgment debt on grounds not within the above stated confines.

With the above established, it is now relevant to examine the debtor's contention in line with the above conditions and principles to determine whether he can be heard on his affidavits. In the opinion of this Court, the debtor's first contention falls under s. 5(1)(b) and s. 6(2) of the Act, where the petitioning creditors must prove that a debt is payable by the debtor either immediately or at some certain future time. His defence of accord and satisfaction deals with the issue of whether there is a debt payable to the petitioning creditor. It is neither a set-off, counter-claim or a cross claim which he could not have set up in the action in which the judgment was obtained. His claim relates to no money actually due to the petitioning creditor either immediately or sometime in the future because payment has already been made before the Petition was filed. For this, he is certainly entitled to be heard.

Upon determination of the above, this Court shall now proceed to analyse the debtor's claim. The debtor's assertion is based mainly on a letter he issued to the petitioning creditors on 8 November 1993. The relevant part of this letter reads as follows:

> I write to confirm that I will pay the balance sum of US$200,000 as full and final settlement of the amount owing by Woodside Park Investment Co. Ltd. (the principle borrower of the loan from the JC of which the debtor is a guarantor) on or before 12th instant. As agreed, you will instruct your solicitors to withdraw all the legal proceeding against me upon receiving the aforesaid US$200,000.

The sum of US$200,000 in Singapore currency equivalent was duly paid by the debtor to the petitioning creditors on 11 November 1993. The petitioning creditors though admitted acceptance of this sum denied that it is for such a final settlement of the judgment sum. They explained that they have never accepted the debtors' offer to treat this as full and final settlement; their acceptance of this sum was towards part payment of the judgment debt.

After perusing the documentary evidence annexed to the respective affidavits of the parties, this Court finds no agreement was ever reached between the debtor and the petitioning creditors to treat the payment of US$200,000 as a full and final settlement of the judgment debt. The debtor's offer was never accepted by the petitioning creditors prior to the debtor making the payment of US$200,000. If the petitioning creditor had agreed to accept such an offer of the debtor previously, the debtor would not have ended his same letter of offer with a request to the petitioning creditor for; "Please confirm by fax the aforesaid arrangement is agreeable to you." Such a request was not necessary if an agreement had been reached, and such an act can only imply otherwise especially when the petitioning creditor never responded to this request.

Following from the above, the debtor on 21 February 1994 made another offer of US$350,000 in full and final settlement of the judgment sum. This again is obvious to indicate that his previous offer was not received with agreement from the petitioning creditor, otherwise, if it had, there was no necessity to tender this second offer.

On matters relating to this second offer, the debtor immediately raised objections to the admissibility of the letters containing such an offer on the ground that they were marked "without prejudice." The principles governing this aspect of the law is well established and sufficiently elaborated in the cases of *Malayan Banking Bhd. v. Foo See Mo1* [1981] 2 MLJ 17, *Allumini Industries Sdn. Bhd. v. Cookermate (M) Sdn. Bhd.* [1990] 2 CLJ 777, and *Oh Kuang Liang v. Associated Wood Ind. Sdn. Bhd.* [1995] 2 AMR 1872. There is no necessity for this Court to repeat them except to stress that the debtor had never raised any objections until now on its admissibility, nor had made any application to strike out this offending disclosure. Instead, the debtor

has even made reference and commented on this 'privilege' letter in his own affidavit. By such an act, as correctly decided in the Singapore case of *Lim Tjoen Kong v. A-B Chew Investment Pte Ltd.* [1991] 2 MLJ 4, the debtor has "waived away their (his) privilege" to the admissibility of this letter. He therefore can no longer at this stage protest against its admission.

Base on the above reasons, the first contention of the debtor is hereby rejected by this Court.

The second contention of the debtor relates to the rights of the petitioning creditors to recover the judgment debt when it is affected by s. 6(3) of the Limitation Act of 1953. Before it can be considered it must once again satisfy the conditions and principles as set out under ss. 5(1) and 6(2) and (3) of the Act.

Judging from the allegation of the debtor, it is the opinion of this Court that if the debt is statute barred, then no debt is payable immediately or at sometime in the future. Further, if such a debt is not enforceable at the time when the bankruptcy notice was issued, then the act of bankruptcy may not have been committed by the debtor. Such issues must be ascertained by the Courts at this stage since s. 6(3) of the Act provides that; "if the Court is not satisfied with the proof of the petitioning debt *or of the act of bankruptcy* ... the Court may dismiss the petition" (the italics are the emphasis of this Court). For these reasons, the second contention of the debtor can be heard by this Court.

Having established that, this Court shall proceed to examine the contention of the debtor in detail. In the bankruptcy notice as well as the petition, the particulars of debt disclosed by the petitioning creditors are as follows;

Item 1 is the claim for the principal sum as per the judgment dated 19 November 1987	:	RM 4,403,295
Item 2 is interest on the principal sum at the rate of 9 1/2 p.a. from 22 March 1986 to 7 October 1990 (1,661 days)	:	RM 1,903,610.78 RM 6,306,905.78
Item 3 is less payment made (by the debtor) on 8 October 1990	:	RM 135,375 RM 6,171,530.78

Item 4 right up to **item 14** are entries of similar nature as item 2 and 3 with a total balance figure at the end of each item. The period for calculation of interest in each of the interest items are consecutive dates following the earlier entry.

This set of particulars undoubtedly represents a running account, where payments made by the debtor were credited to reduce an outstanding sum at the material time which included both principal and interest, but yet not fully

settling the particular amount then outstanding. By this, one cannot with precision and certainty pin point which particular item of interest has been settled. What preoccupies this Court is the claim for interest under item 2. The date is stated as 23 March 1986 to 7 October 1990. 23 March 1986 must therefore be the date when interest on the judgment debt became due. But under s. 6(3) of Limitation Act 1953, "no arrears of interest in respect of any judgment debt shall be recoverable after the expiration of six years from the date on which the interest became due." Calculating six years backwards commencing from 19 November 1992 (the date when the bankruptcy notice is dated) would be 18 November 1986. This would mean that no interest can be recoverable by the petitioning creditors before 18 November 1986. Nevertheless item 2 bears a claim for interest from a date before 18 November 1986. This makes the petitioning creditors' claim unenforceable on the interest on the period from 23 March 1986 to 18 November 1986. But since the interest item has formed an integral part of the total amount, inseparable from the principal sum as well as other subsequent claim on interest not affected by the Limitation Act due to the nature of a running account as stated in the particulars as set out in the bank's notice and the petition, the entire claim of the petitioning creditors as stated in the bankruptcy notice and petition is therefore unenforceable. The amount of interest that is statute barred has been absorbed into the whole sum claimed and has become industinguishable by the nature of this form of accounting. When a judgment debt is unenforceable, it would tantamount to the judgment creditor not being in a position to issue execution. This according to the authorities of *re Woodall, ex-parte Woodall* [1884] 13 QBD 479 and *Re A debtor* [1938] 1 All ER 824 which were accepted by the Supreme Court in *Low Mun v. Chung Khaiw Bank Ltd.* [1988] 1 MLJ 263, depletes the bankruptcy notice. It is essential that at the time of issue of the bankruptcy notice, the judgment creditor must be in the position to issue execution. In this case, the petitioning creditor could not have issued execution by the nature of the integrated debt being statute barred, and consequently, the bankruptcy notice which is connected to the enforceability of the judgment debt must be void *ab initio*. When the bankruptcy notice is void *ab initio*, the alleged act of bankruptcy cannot be founded, warranting the petition to be rejected.

The above findings also find favour in the case of *Ex-parte Tyrte, In Re Tynte* [1880] 15 Ch D 125 where Chief Justice Bacon ordered the annulment of an adjudicating order made against the debtor on the ground that the judgment debt was statute barred.

It is pertinent at this stage to refer to proviso (ii) of s. 3(2) of the Act which reads as follows:

> Provided that the bankruptcy notice *(ii) "shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless* the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such

mistake; but if the debtor does not give such notice he shall be deemed to have complied with bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein. (The italics are inserted by this Court).

Though this proviso provides that a bankruptcy notice shall not be invalidated when the sum specified therein exceeds the amount actually due, but in this case before this Court, this is not the matter in issue. This case involves the enforceability of the whole amount specified in the bankruptcy notice and petition. The amount as stated earlier has been so assimiliated into the final sum by nature of a running account that the sum claimed as a whole stated in the bankruptcy notice and petition is unenforceable for reason that it is statute barred.

This Court has the opportunity of reading the judgment Edgar Joseph Jr. J (as he then was) in the case of *Wee Chow Yong T/A Vienna Music Centre v. Public Finance Bhd.* [1989] 3 MLJ 509, where the learned Judge did address the point of interest being statute barred in a bankruptcy notice. In that case, the learned Judge described the amount of interest contained in the bankruptcy notice which was statute barred as, "a triffling sum in respect of a period of just two months" and proceeded to apply proviso (ii) of s. 3 of the Act. It must be noted that whether the amount is triffle or not, the law on bankruptcy requires strict interpretation and compliance, and it also depends on the method of how the amount due is stated in bankruptcy notice. In our case as explained earlier, the amount claimed is on a running account which this Court believes is not the situation in *Wee Chow Yong*'s case. The facts of that case is therefore distinguishable.

Based on the reasons aforesaid, this Court hereby dismisses the petitioning creditors' appeal with cost, and further orders that the petition be also dismissed with cost.

Reported by Akbardin b. Hj. Abdul Kadir